

CIVIL SERVICE COMMISSION MINUTES

November 18, 1998

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin, President
Roy Dixon, Vice-President
Mary Gwen Brummitt
Gloria Valencia-Cothran
Sigrid Pate

Comprising a quorum of the Commission

Larry Cook, Executive Officer
Ralph Shadwell, Deputy County Counsel
Joy Kutzke, Reporting

**CIVIL SERVICE COMMISSION MINUTES
November 18, 1998**

2:00 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway,
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
5,11,17,19,20,21		18	6

COMMENTS Motion by Dixon to approve all items not held for discussion; seconded by Valencia-Cothran. Carried.

**CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda.**

- a. Commissioner Pate: Deborah Olberding, S.E.I.U. Local 2028, on behalf of **Louis Lopez**, a former probationary employee in the Department of General Services alleging disability discrimination by the Department of General Services.

REGULAR AGENDA

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the special meeting of October 28, 1998.

Approved.

CONFIRMATION OF ASSIGNMENT

2. Commissioner Valencia-Cothran as hearing officer in the appeal of **Manuel J. Perez**, appealing an Order of Suspension from the Sheriff's Department.

Confirmed.

3. Commissioner Dixon as hearing officer in the appeal of **Robert Parsons**, appealing an Order of Removal from Health and Human Services Agency.

Confirmed.

4. Commissioner Austin as hearing officer in the appeal of **Dawn Anderson**, appealing an Order of Termination from the Sheriff's Department.

Confirmed.

5. **Artemio B. Delacruz** appealing an Order of Removal from the Probation Department. The appeal and answer in this matter were not received in a timely manner.

RECOMMENDATION: Deny request.

Mr. Delacruz submitted a letter which was received by the Commission office 13 days beyond the deadline for filing timely appeals and answers. He is now requesting the Commission consider his letter as an appeal and answer and allow him to proceed with a disciplinary hearing.

Mr. Delacruz addressed the Commission requesting that it make an exception and allow him a disciplinary appeal in spite of the fact that he did not meet the filing deadlines. He stated that he was seeking counsel and, due to his frustration, lost track of the passage of time. Merrilyn Carpenter responded, on behalf of the Probation Department, requesting that the Commission deny Mr. Delacruz's request.

Motion by Brummitt to approve staff recommendation; seconded by Valencia-Cothran. Carried.
Valencia-Cothran - No.

WITHDRAWALS

6. **William G. Powell** appealing an Order of Termination from the Sheriff's Department. Formerly assigned to Commissioner Valencia-Cothran.

Withdrawn.

STIPULATED AGREEMENT

7. Commissioner Valencia-Cothran: Everett L. Bobbitt, Esq. on behalf of **James Parks** from an Order of Suspension from the Sheriff's Department.

RECOMMENDATION: Approve agreement.

Agreement approved.

COMPULSORY LEAVE

Complaints

8. James Gattey, Esq. on behalf of **Keith Crawl**, appealing an Order of Compulsory Leave from the Sheriff's Department.

RECOMMENDATION: Assign to a hearing officer.

Staff recommendation approved. Commissioner Pate assigned as hearing officer.

9. James Gattey, Esq. on behalf of **Kevin Paiva**, appealing an Order of Compulsory Leave from the Sheriff's Department.

RECOMMENDATION: Assign to a hearing officer.

Staff recommendation approved. Commissioner Brummitt assigned as hearing officer.

10. Stewart Kocivar, Sr. Field Representative, S.E.I.U. Local 535, on behalf of **Luis Macias**, appealing an Order of Compulsory Leave from Health and Human Services Agency.

RECOMMENDATION: Assign to a hearing officer.

Staff recommendation approved. Commissioner Dixon assigned as hearing officer.

RECONSIDERATION

Complaints

11. John Richards, Esq. on behalf of **Alicia Mariscal** requesting reconsideration for a Rule XI investigation regarding the manner in which her employment ended with the Department of Agriculture, Weights and Measures. (Previously on 8/19/98 agenda, continued from 9/30/98 and 10/28/98 CSC mtgs.)

RECOMMENDATION: Deny request.

Mr. Richards addressed the Commission on behalf of Ms. Mariscal requesting a Rule XI investigation into the circumstances which resulted in Ms. Mariscal's "constructive discharge" from the Department. He pointed out issues which he asserts were not addressed in a prior investigation conducted by the Commission. William Songer, Deputy County Counsel, responded on behalf of the Department of Agriculture, Weights and Measures that Ms. Mariscal's request for a subsequent broader investigation is excessively late and should be denied. He addressed concerns regarding the precedent granting such request would set. Mr. Songer also clarified that the Court, in the currently pending civil action filed by Ms. Mariscal, did not make a determination as to whether or not her administrative

remedies had been exhausted and she did not receive direction from the Court to return to the Commission. Larry Cook, Executive Officer, explained his recollection relating to the intent of Rule XI at the time it was drafted. He recalled the exclusion of referencing filing deadlines was intended to purposely allow the Commission greater flexibility regarding such deadlines under this Rule. Generally, the Commission is sensitive, on a case by case basis, to the reasonable time in which requests for investigations are made. There was extensive discussion amongst Commissioners to sort out issues of concern in order to determine whether or not to grant Ms. Mariscal's request.

Motion by Dixon to grant Rule XI investigation; seconded by Valencia-Cothran. Carried. Commissioner Pate assigned as Investigative Officer.
Austin, Brummitt - No.

SELECTION PROCESS FINDINGS/COMPLAINTS

Findings

12. **Armando R. Yearwood** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.

13. **Amy Eppenger** appeal of removal of her name by DHR from the employment list for Corrections Deputy Sheriff.

14. **Jonathan R. Russell** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.

15. **Christi A. Licudine** appeal of removal of her name by DHR from the employment list for Corrections Deputy Sheriff.

16. **Rachel Ann Cotte** appeal of removal of her name by DHR from the employment list for Correctional Deputy Probation Officer I.

RECOMMENDATION: Ratify item Nos. 12 through 16. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 12 through 16 ratified.

Complaints

17. **Patricia Minnich** appealing the selection process by the HHSA for having been denied a promotion to Protective Services Worker II.

RECOMMENDATION: Deny request. (Continued from 9/30/98 and 10/28/98 CSC mtgs.)

Steward Kocivar, S.E.I.U. Local 535, spoke on behalf of Ms. Minnich's request for a Rule X hearing regarding her non-selection as a PSWII. Ms. Minnich is 28-year employee. She has been involved with

protective social work at the journey level for 20 years. He contends that Ms. Minnich has been denied a promotion based on an Agency policy that sets forth a criterion that applicants for promotion must have two prior years of satisfactory performance appraisals in order to be considered for promotion. He stated this policy was issued subsequent to agreements having been made between the Agency and the Union. He alleged that the Agency's application of the policy is inconsistent. Mr. Kocivar also referenced an Agency policy that indicates that applicants would be considered on a case-by-case basis and that there would be a distinction in assignments between PSWI's and PSWII's. He contends that policy has also been disregarded. Lynette Mercado responded on behalf of the Health and Human Services Agency. She explained that the two year review of an employee's performance has always been an Agency criterion when considering promotions and has been consistently applied and has been in place since December, 1994. Larry Cook, Executive Officer, discussed potential remedies the Commission could offer should it decide to allow Ms. Minnich an appeal and if she were to be successful.

Motion by Pate to approve request for a selection process hearing; seconded by Dixon. Carried. Commissioner Austin assigned as hearing officer.

DISCRIMINATION

Complaints

18. **John L. Hammerstrand**, Environmental Land Use Specialist II, alleging age discrimination by the Department of Environmental Health.

RECOMMENDATION: Assign a Commissioner and concurrently appoint the Internal Affairs Officer as hearing officer for investigation and report back.

Staff recommendation approved. Commissioner Valencia-Cothran assigned as hearing officer.

Findings

19. Commissioner Austin: **Dwayne McDougle**, a former Corrections Deputy Sheriff Cadet, alleging race discrimination by the Sheriff's Department. (Continued from 10/28/98 Agenda.)

FINDINGS AND RECOMMENDATIONS:

The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA has been received and reviewed by this Investigating Officer, who concurs with the findings that complainant failed to establish allegations of discrimination based on race; and probable cause that a violation of discrimination laws occurred was not established. It is therefore recommended that: (1) Dwayne McDougle's complaint be denied; and (2)

the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law.

Commissioner Valencia-Cothran queried Ernie Lucero, OIA Investigator, as to those he interviewed during the course of his investigation; specifically wanting to know whether he had included interviews with other cadets. She stated that the training officers' and cadets' perspectives could be different when they chronicle their respective recollection of events. She also addressed concerns that other training officers who were interviewed were not present with Mr. McDougale and his training officer at all times. Mr. Lucero stated that he did not feel it was necessary to interview the trainees based on the information he received from the Sheriff's Department Internal Affairs. He offered to interview trainees if the Commission desired him to do so.

Motion by Commissioner Austin to approve Findings and Recommendations; seconded by Dixon. Carried.
Valencia-Cothran, Pate - No.

20. Commissioner Pate: Deborah Olberding, S.E.I.U. Local 2028, on behalf of **Louis Lopez**, a former probationary employee in the Department of General Services alleging disability discrimination by the Department of General Services.

FINDINGS AND RECOMMENDATIONS:

The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA has been received and reviewed by this Investigating Officer, who agrees that probable cause was established in this matter. It is therefore recommended that: (1) Louis Lopez's complaint be pursued and the matter proceed under the provisions of Rule VI of the Civil Service Rules; (2) a hearing officer be assigned to conduct a Rule VI hearing and (3) the Commission approve and file this report.

Motion by Commissioner Pate to approve Findings and Recommendations; seconded by Dixon. Carried. Commissioner Pate appointed as hearing officer.

INJURY LEAVE

Findings

21. Commissioner Valencia-Cothran: **Debra Brown-Fraser**, appealing denial of injury leave from DHR.

FINDINGS AND RECOMMENDATIONS:

Employee requested an injury leave hearing regarding an injury leave issue that occurred during the time the Commission had authority to adjudicate such appeals. The Commission was charged

with determining whether or not Employee's injury was sustained under extraordinary circumstances in order to grant her request for extension of the injury leave benefit. Employee's position was that the injury was sustained under extraordinary circumstances because she was allegedly working out of class. The DHR was successful in proving that the injury did not occur under extraordinary circumstances. This hearing officer concludes that DHR properly administered this leave matter and properly denied Employee's request for extended benefits. Therefore, it is recommended that: (1) The Commission determine that Employee's injury was not sustained under extraordinary circumstances; (2) Employee's appeal be denied and (3) the Commission approve and file this report.

Motion by Valencia-Cothran to approve Findings and Recommendations; seconded by Pate. Carried.

OTHER MATTERS

Performance Appraisals

22. **Dalton Lee**, an employee of the Health and Human Services Agency (HHSA), requesting the sealing of his performance appraisal covering the period March 28, 1997 through April 15, 1998. (Continued from 10/28/98 Agenda.)

RECOMMENDATION: Grant request.

Staff recommendation approved.

Extension of Temporary Appointments

23. Parks and Recreation

1 Parks Recreational Supervisor (Marisa A. Ortiz)

24. Assessor/Recorder/County Clerk

1 Division Chief, Assessor (Jacquelyn Day)

25. Health and Human Services Agency

1 Forensic Psychology Fellow (Christine Taylor)

RECOMMENDATION: Ratify Item Nos. 23 through 25.

Item Nos. 23 through 25 ratified.

26. Public Input.

ADJOURNMENT: 4:00 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE DECEMBER 16, 1998.